

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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JAMES OBERGEFELL, et al., : CASE NO. 1:13cv501  
:   
Plaintiffs, : Cincinnati, Ohio  
:   
- v - : Monday, July 22, 2013  
: 1:33 p.m.  
JOHN KASICH, :   
: **MOTION FOR**  
Defendants. : **TEMPORARY RESTRAINING ORDER**

- - -

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE TIMOTHY S. BLACK, JUDGE

- - -

APPEARANCES:

For the Plaintiffs: ALPHONSE A. GERHARDSTEIN, ESQ.  
JENNIFER L. BRANCH, ESQ.  
JACKLYN GONZALES MARTIN, ESQ.  
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For the Defendant Kasich: BRIDGET C. COONTZ, ESQ.  
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Columbus, OH 43215  
  
For the Defendant Jones: AARON M. HERZIG, ESQ.  
City of Cincinnati  
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Cincinnati, OH 45202  
  
Court Reporter: Jodie D. Perkins, RMR, CRR

1 AFTERNOON SESSION, Monday, July 22, 2013

2 (Proceedings commenced at 1:33 p.m.)

3 THE COURT: Good afternoon, ladies and gentlemen.

4 We're here in the open courtroom on the record in the civil  
5 case of *James Obergefell and John Arthur versus John Kasich* in  
6 his official capacity, et al.

7 We're set for hearing on plaintiffs' motion for a  
8 temporary restraining order. I would like the attorneys to  
9 enter their appearances for the record. I'll then make a short  
10 statement, inquire as to how the parties intend to proceed, and  
11 then we will proceed at this hearing on the plaintiffs' motion  
12 for a temporary restraining order.

13 So who appears as counsel for the plaintiffs and who  
14 do you have with you?

15 MR. GERHARDSTEIN: Al Gerhardstein for the plaintiff.  
16 And with me is plaintiff, James Obergefell; and Jennifer  
17 Branch, as co-counsel; and Jacklyn Gonzales Martin, as  
18 co-counsel.

19 THE COURT: Very well. Good afternoon.

20 And on behalf of the State defendants, the Ohio  
21 Attorney General and the Ohio governor, in their official  
22 capacities, if counsel would enter their appearances.

23 MS. COONTZ: Good afternoon, Your Honor. Bridget  
24 Coontz from the Ohio Attorney General's Office on behalf of the  
25 AG and the governor. With me is Kristopher Armstrong, also an

1 Assistant Attorney General.

2 THE COURT: Very well. And we have counsel here on  
3 behalf of the local defendant, Camille Jones, in her capacity  
4 as registrar of vital statistics. Counsel, if would you be  
5 willing to enter your appearance for the record.

6 MR. HERZIG: Good afternoon, Your Honor. Aaron  
7 Herzig, City of Cincinnati, on behalf of Doctor Jones in her  
8 official capacity.

9 THE COURT: Very well. We have the appearances  
10 entered of record.

11 I would like to inquire of each of you as to how you  
12 would propose to proceed; and after I've heard it, we'll see  
13 how we're going to proceed.

14 How does the plaintiff propose to proceed?

15 MR. GERHARDSTEIN: Your Honor, I have talked to  
16 defense counsel and propose the following: That plaintiff  
17 start with a summary of the argument and then supplement the  
18 facts with short testimony from plaintiff James Obergefell, and  
19 then defense counsel can -- when they give their argument, they  
20 can include any response they have to the testimony they've  
21 just heard. And then if you want to hear any more, maybe give  
22 us a chance to respond to that. We'll be able to go in that  
23 fashion.

24 THE COURT: And forgive me for asking. How long do  
25 you anticipate your presentation will consume?

1 MR. GERHARDSTEIN: Forty minutes.

2 THE COURT: Very well. On behalf of the State  
3 defendants, how do you all propose we proceed?

4 MS. COONTZ: Your Honor, we're in agreement with the  
5 manner in which the plaintiff has just explained.

6 THE COURT: So we'll have argument from the plaintiff,  
7 and then they're going to call a plaintiff to the witness stand  
8 for testimony, they're then going to argue further, and then  
9 we'll turn to you all and we'll hear argument?

10 MS. COONTZ: That is correct, Your Honor.

11 THE COURT: Do you anticipate presenting testimony?

12 MS. COONTZ: No, we don't, Your Honor.

13 THE COURT: Very well. How does the City propose to  
14 proceed?

15 MR. HERZIG: Your Honor, the City is fine with the  
16 manner proposed by the plaintiffs.

17 THE COURT: And the City will argue after the State  
18 defendants have argued?

19 MR. HERZIG: Yes, Your Honor. And we have no one to  
20 provide testimony.

21 THE COURT: Very well. And at the conclusion of those  
22 arguments, the Court would anticipate a reply from the  
23 plaintiffs.

24 I would propose that you proceed accordingly, Counsel.

25 MR. GERHARDSTEIN: Thank you, Your Honor. May I

1 approach?

2 THE COURT: Yes. Thank you.

3 MR. GERHARDSTEIN: Judge, Jennifer Branch, and Jackie  
4 Gonzales Martin, and I are here on behalf of James Obergefell  
5 and John Arthur. The evidence is going to show that these two  
6 men are in love, and they've been life partners for more than  
7 20 years. James and John were recently married in Maryland.  
8 The marriage between same sex couples are legal in Maryland but  
9 their marriage is not recognized in Ohio.

10 Why is that? Because Ohio doesn't recognize any  
11 marriages between same sex couples under Article 15, Section 11  
12 of the Ohio Constitution and Ohio Revised Code 3101.01(C).

13 Now, had James and John been an opposite sex couple  
14 and gone to Maryland, Ohio would recognize their Maryland  
15 marriage. So they filed this lawsuit alleging that as applied  
16 to them, and only to them, the Ohio Constitution, Article 15,  
17 Section 11 and Ohio Revised Code 3101.01 violate the Equal  
18 Protection Clause of the United States.

19 We're going to show that under any level of review  
20 Ohio has no legitimate state interest that supports the burden  
21 on these two men that they experience in terms of their First  
22 Amendment rights, their privacy rights, as they live and  
23 receive or don't receive benefits that they would have received  
24 as a married couple recognized by this state.

25 As we set out in our hearing memorandum, Judge, the

1 facts about gay people were thoroughly explored by Judge  
2 Spiegel just across the hall, in the *Equality Foundation* case  
3 almost 20 years ago.

4 THE COURT: And before we get to that, if this Court  
5 were to find, as you argue, that the Ohio law as applied to  
6 these two plaintiffs is violative of the equal protection  
7 guarantees of the United States' Constitution, would not that  
8 ruling apply to also similarly-situated people?

9 MR. GERHARDSTEIN: Well, there would be -- first of  
10 all, we're asking for a TRO, so it is a ruling that there would  
11 be a substantial likelihood of success. And it would certainly  
12 have some precedential value that a TRO generally does not.  
13 And then we'd have time, as the State has asked for, for a full  
14 presentation and a preliminary injunction hearing, should there  
15 be any additional facts that are necessary. And that ruling  
16 would probably have more precedential value.

17 So, I mean, we aren't trying to rush a really  
18 important decision. We are trying to protect the interests of  
19 these two men, one of which is dying, as I will explain  
20 shortly.

21 THE COURT: Is a temporary restraining order a final  
22 appealable order?

23 MR. GERHARDSTEIN: No.

24 THE COURT: And are the parties and the Court in a  
25 position to continue in effect by mutual agreement a temporary

1 restraining order, if one were issued, such that we would then  
2 not be rushed to have the full-blown trial?

3 MR. GERHARDSTEIN: Plaintiffs would be willing to,  
4 Your Honor.

5 THE COURT: Very well.

6 MR. GERHARDSTEIN: So as I was saying, more than 20  
7 years ago, in *Equality Foundation*, Judge Spiegel made findings  
8 that are very relevant to this case; and then again, just a  
9 couple of years ago, Judge Webster in the Prop 8 trial, made  
10 similar findings.

11 And very briefly, they come down to this. We learned  
12 in those cases that sexual orientation is established at an  
13 early age; that is not amenable to change; that gay people make  
14 stable and loving partners, at least as stable and loving as  
15 opposite sex people; that gay people are as effective as  
16 parents as opposite sex people, and we also learned that  
17 there's been a history of discrimination and even violence  
18 against gay people. We've learned that the discrimination  
19 against gay people has included passage of laws designed simply  
20 to hurt them.

21 So those laws do not have a legitimate governmental  
22 purpose. Most of the facts, for the purposes of this motion  
23 for a TRO, are stipulated. If you look at our pleadings and  
24 their responses, the City doesn't challenge the plaintiffs'  
25 central premise at all and doesn't defend what it calls Ohio's

1 discriminatory ban on same sex marriages.

2           And the State cannot overcome plaintiffs' central  
3 premise, and that's this. If an opposite sex couple marries in  
4 another state under circumstances that are not allowed under  
5 Ohio law, like a marriage of first cousins, then Ohio will  
6 nonetheless recognize that opposite sex couples' marriage when  
7 that couple returns to Ohio and seeks recognition. But when a  
8 gay couple gets married where same sex marriage is legal, Ohio  
9 will not recognize that marriage.

10           We say that violates the Equal Protection Clause. The  
11 State says Ohio has a law prohibiting same sex marriage, so it  
12 doesn't have to recognize the Maryland law. But Ohio has a law  
13 that says if first cousins come before a proper official and  
14 says, as first cousins we want to marry, they're not going to  
15 let them marry either. So we do have comparables here.

16           And the State goes on to argue that there's an  
17 expressed prohibition on same sex marriage, and that  
18 distinguishes it from, in their eyes, the situation of first  
19 cousins. But that argument is no longer viable after *Windsor*,  
20 because in the *Windsor* case, the U.S. Supreme Court stated that  
21 if the same sex couple is married in a state where same sex  
22 marriage is legal, that the federal government then has to  
23 recognize that same sex marriage on an equal basis with  
24 opposite sex marriages.

25           And that was required by the principle of equal



1 protection, not full faith and credit. The State spent a lot  
2 of time in their brief saying, well, there's a provision of the  
3 federal DOMA law that allows states to continue not to  
4 authorize same sex marriages.

5 That's right, and not to recognize other states' same  
6 sex marriages. That's right, as a provision of full faith and  
7 credit. We're not arguing full faith and credit. Under  
8 *Windsor*, as applied to these two plaintiffs, if Ohio is going  
9 to go ahead and recognize opposite sex marriages that do not  
10 meet Ohio marriage criteria, then it has to recognize same sex  
11 marriages that do not meet Ohio marriage criteria.

12 THE COURT: So if the State of Ohio were to pass  
13 legislation that it's going to recognize only these categories  
14 of marriage and one of them includes -- they're going to only  
15 except these categories of marriages and same sex marriage is  
16 not on that list and they apply that uniformly, can states  
17 prohibit same sex marriage?

18 MR. GERHARDSTEIN: Well, first of all, let's  
19 understand that we're not challenging Ohio's right to designate  
20 what marriages may be celebrated in this state yet. I mean, at  
21 this point we're simply talking about recognizing marriages  
22 from other states where they're legal. And at this point, Ohio  
23 has made a pretty blanket rule that accepts all of the  
24 marriages from other states, regardless of whether they would  
25 meet the technical requirements of a marriage in Ohio.

1           So if Ohio chose to try to conform all of that and  
2 take away the differences, then we'd probably be back in court  
3 saying, well, you're only doing that in order to continue to  
4 discriminate. But we don't have that case yet either.

5           No one in this courtroom yet has challenged the notion  
6 that there really are differences between same sex marriage and  
7 opposite sex marriage that can't be explained except by saying  
8 that they don't want to treat them the same. I mean, first  
9 cousins can't be married in Ohio, can be married in other  
10 states; underage women can't be married in Ohio, can be married  
11 in other states -- and we could provide a chart about all of  
12 the differences at some point if the Court wants. But they  
13 come back to Ohio and they are -- all of those opposite sex  
14 marriages are recognized, the same sex marriages are not.  
15 After *Windsor*, you can't do that.

16           THE COURT: And that's because the law of the State of  
17 Ohio, since its formation, or at least 1994, was that the  
18 validity of a marriage is determined by the laws of the  
19 jurisdiction in which the marriage was solemnized.

20           MR. GERHARDSTEIN: That's correct. And actually,  
21 that's still the law in Ohio, except for this exception they're  
22 trying to carve out that we say you can't carve out under  
23 *Windsor* anymore.

24           THE COURT: And the exception that they're trying to  
25 carve out, you say they can't carve out because there is no

1 legitimate state interest in discriminating against same sex  
2 marriage?

3 MR. GERHARDSTEIN: As compared to opposite sex  
4 marriage. And it is really important that we're saying that  
5 because, again, the Supreme Court has recognized that Ohio can  
6 continue to not authorize same sex marriages to be celebrated  
7 in this state.

8 The issue is what are they going to do about opposite  
9 sex marriages celebrated outside of Ohio that don't conform to  
10 Ohio law and then they get recognized here versus same sex  
11 marriages that are similarly situated, the Equal Protection  
12 Clause does not recognize a state interest, and we learned this  
13 in *Windsor*, between those two types of marriages. Once the  
14 state says we're going to recognize the marriage, then the  
15 Supreme Court says equal protection applies.

16 THE COURT: So your argument is not that Ohio has to  
17 authorize same sex marriage in Ohio, but your argument is that  
18 Ohio has to recognize another state's law that permits same sex  
19 marriage?

20 MR. GERHARDSTEIN: Yes, because of the unique way that  
21 Ohio already recognizes another state's marriages, which may  
22 not conform to Ohio law. That's exactly it, Judge.

23 And we're here on a TRO because one plaintiff, John  
24 Arthur, is dying. The evidence is going to show that he has  
25 days or, at most, weeks left to live. When he dies, the final

1 record of his life in Ohio will be his death certificate.  
2 Unless this court acts, the death certificate will not reflect  
3 his marriage at all and will not reflect that his husband,  
4 James Obergefell, is his surviving spouse.

5 Now the State responds saying that the death record is  
6 no big deal, and they say procedures exist that allow us to fix  
7 it later. But it is not that simple. There actually is some  
8 case law -- which we've been checking since we got the State's  
9 brief -- that makes it clear that the intent behind any  
10 procedural rules to fix a death or a birth certificate is just  
11 that -- they're fixing errors and not legal issues.

12 So if you look at *En re Marriage License for Nash* at  
13 2003 Westlaw 23097095, it's an Ohio Court of Appeals 11th  
14 District decision from 2003, and in that case, the court said  
15 that the procedures the State cited to can't be used to fix a  
16 marriage license that -- in such a way that it would permit a  
17 transsexual to marry, in violation of what that court  
18 determined to be Ohio law.

19 So they're looking at these as ministerial errors that  
20 can be fixed and not as legal errors, which is what we've got  
21 before the court.

22 And you could also look at *State ex rel. Stark versus*  
23 *Zipf*, Z-I-P-F, 172 Ohio State 462, a 1961 case in which a widow  
24 sought to have the cause of death on a death certificate  
25 changed so that suicide would be removed. And the Court said,

1 you know, these procedures are not present to fix something as  
2 substantial as whether it is a suicide or not, and said that  
3 they're really only there to deal with situations where you've  
4 got a mistake of another type of fact.

5 If you really look at the value of a death certificate  
6 under Ohio law, you learn very quickly under 2105.35 that it's  
7 prima facie evidence of everything related to the death. So it  
8 is the official state record of that. And that's true across  
9 the country, if you look at 42 ALR 1554.

10 And then even after there's any dispute or any inquiry  
11 into the cause of death and into the facts surrounding the  
12 death that one might use the death record for in the short  
13 term, after a number of years, 50 years, the director of the  
14 public -- of the State Department of Public Health turns all of  
15 those records over to the Ohio Historical Society, and then the  
16 death record becomes part of the genealogical history of  
17 everybody in Ohio. And the bottom line is, if you don't get it  
18 right, that's how the dead person is remembered for eternity as  
19 a citizen of Ohio.

20 And this is a very serious matter. The City, by the  
21 way, appears to disagree with the State as to how easily this  
22 matter can be resolved just by having bureaucrats meet, and  
23 they make it clear that this court must act, at a minimum, to  
24 relieve the defendant, Doctor Jones, of the time constraints  
25 that exist in order to allow accurate completion of the record

1 through due litigation before this court.

2           So without action by this court, there will be no  
3 error on the death certificate for the State to fix because it  
4 will be completed according to existing law, and that will  
5 include having a blank next to Marriage and having a blank next  
6 to Surviving Spouse.

7           So an injunction must issue to at least stop the  
8 deadlines imposed on Defendant Jones from preventing accurate  
9 relief in this case.

10           Properly recording the marriage of these men on this  
11 final and important document is itself a really important goal  
12 for our clients; but equally important, as you will hear from  
13 James Obergefell shortly, is the emotional burden these men  
14 feel during every moment of John's last days while they are  
15 rejected as married by their own state.

16           At the preliminary phone conversation that this court  
17 held, you asked for some additional facts and law about  
18 irreparable harm, and our filing this morning provided  
19 substantial law, especially about the value of any deprivation  
20 of a constitutional right. But I think it bears -- it's  
21 helpful to hear from Mr. Obergefell himself as to the harm that  
22 he and his partner feel and experience as a result of his  
23 impending death without this being resolved.

24           So, Judge, what I would ask is that we take some  
25 testimony from Mr. Obergefell, and then I trust that after the

1 hearing and after you review all of the evidence and you study  
2 the growing precedent in favor of equal treatment for gay  
3 people and same sex couples that you will grant a TRO as  
4 proposed, enjoining the defendants from enforcing Article 15,  
5 Section 11 of the Ohio Constitution and Ohio Revised Code  
6 3101.01(C) as applied to these plaintiffs.

7 THE COURT: Can I ask you a question before we get to  
8 testimony?

9 MR. GERHARDSTEIN: Sure.

10 THE COURT: Who would the court order to prepare the  
11 death certificate to say, Married Under Maryland Law, Surviving  
12 Spouse Under Maryland Law?

13 MR. GERHARDSTEIN: You would order Doctor Camille  
14 Jones to do that, but you also -- the State's a necessary  
15 party, number one, because as applied to these plaintiffs we're  
16 saying that contrary law is unconstitutional, and I had to give  
17 notice to the Ohio Attorney General under state law for that.  
18 And Doctor Camille Jones needs to have the reassurance that the  
19 State, which supervises her in this work, has also been ordered  
20 to comply with this Court's directive. So you're ordering  
21 these defendants to accomplish that.

22 THE COURT: But I thought a death certificate was  
23 prepared by a medical examiner or a doctor or a citizen out  
24 there.

25 MR. GERHARDSTEIN: There is -- the initial step is

1 that certain people, funeral home directors, doctors, coroners,  
2 prepare, and then they also rely on citizens, like  
3 Mr. Obergefell, for a lot of the information, but it is Doctor  
4 Camille Jones that has to receive it and make sure that it is  
5 accurate. So if she knowingly knows that Mr. Obergefell has  
6 put himself down as the surviving spouse and listed John as  
7 married, she can't accept it. So we have a problem, and that's  
8 the problem we're trying to resolve here.

9 THE COURT: And once the Court issues an order  
10 requiring her to be restrained from accepting a death  
11 certificate that doesn't list Mr. Arthur as, or whomever it is,  
12 as Married Under Maryland Law, and Surviving Spouse Under  
13 Maryland Law?

14 MR. GERHARDSTEIN: That's correct.

15 THE COURT: Okay. Thank you.

16 If you're ready, I am prepared to hear testimony.

17 MR. GERHARDSTEIN: Plaintiff calls Mr. James  
18 Obergefell.

19 THE COURT: If the gentleman would be willing to  
20 approach.

21 (Witness complied.)

22 THE COURT: And as you arrive, if you would pause and  
23 raise your right hand for the oath to tell the truth.

24 JAMES OBERGEFELL

25 being first duly sworn, was examined and testified as follows:



1 THE COURT: Good afternoon.

2 THE WITNESS: Hello.

3 THE COURT: You may proceed, Counsel.

4 DIRECT EXAMINATION

5 BY MR. GERHARDSTEIN:

6 Q. State your full name, please.

7 A. James Obergefell.

8 Q. And do you reside in Cincinnati?

9 A. I do.

10 Q. Are you married?

11 A. Yes, I am.

12 Q. To whom are you married?

13 A. John Arthur.

14 Q. Where did you get married?

15 A. Glen Burnie, Maryland.

16 Q. And when did you get married?

17 A. July 11th, 2013.

18 Q. I'm going to show you what's been previously marked as  
19 Plaintiff's Exhibit 1. Do you have an exhibit pile in front of  
20 you there?

21 A. I do.

22 Q. Thank you.

23 Can you tell me what that is?

24 A. That is our certified marriage license from the state of  
25 Maryland, Anne Arundel County.

1 Q. And that reflects that under Maryland law you were duly  
2 married and your marriage is recognized under Maryland law?

3 A. Yes, it does.

4 Q. So you are married to John Arthur, right?

5 A. Correct.

6 Q. You've read the complaint that was filed in this case,  
7 right?

8 A. I did.

9 Q. Are the facts in the complaint accurate and true?

10 A. Yes, they are.

11 Q. You and John both filed declarations in support of the  
12 motion for a temporary restraining order, right?

13 A. Correct, we did.

14 Q. Are the facts stated in your declaration true and accurate?

15 A. Yes.

16 Q. Now, because we've done that work already and we're here on  
17 a temporary restraining order, I'm not going to ask you to  
18 repeat everything in the declaration. But I would like you to  
19 tell the Court, just briefly, how long you and John have been  
20 together and what the relationship has meant to the two of you.

21 A. We've been together since December 31st, 1992, and it's  
22 been my world. It's been my life. We've been committed in a  
23 committed relationship since that time. And, in our eyes, we  
24 are married. Our families love us. Our families consider us  
25 married. Our families and friends treat us as a committed

1 married couple.

2 Q. Now you've been a couple and lived together for 20 years.

3 Why is it so important to be married?

4 A. Well, I think that's the same for any couple who decides to  
5 get married, no matter how long they've been together. We want  
6 our country, our state, to recognize our relationship and to  
7 say yes, you matter, you were married; you have the rights, the  
8 benefits and the responsibilities that go with that, just as  
9 any other couple. With John near death, it was very important  
10 to us to have our relationship formalized and recognized by our  
11 government.

12 Q. Now, some of those benefits are economic, like the right to  
13 file a joint tax return, right?

14 A. Correct.

15 Q. But what brings you in to court today is something more  
16 urgent, right?

17 A. Yes.

18 Q. By the way, has the City of Cincinnati done anything  
19 symbolic to recognize you as a couple and to recognize your  
20 marriage?

21 A. They have. They have proclaimed July 11th, 2013, John  
22 Arthur and Jim Obergefell Day, in honor of our marriage.

23 Q. And is a copy of that proclamation signed by Mayor Mallory  
24 present in the record as Plaintiffs' Exhibit 2?

25 A. It is.

1 Q. John is not with you here today in the courtroom?

2 A. No, he is not.

3 Q. Why is that?

4 A. John was diagnosed with ALS two years ago, and he is now  
5 confined to bed unable to go anywhere without proper medical  
6 assistance.

7 Q. You signed his declaration using a Power of Attorney?

8 A. Yes, I did.

9 Q. Was he fully engaged in the preparation of that declaration  
10 and did he help draft it? Did he review it?

11 A. Absolutely. He helped draft it. He reviewed it and gave  
12 his approval.

13 Q. And I don't want to belabor this, but for the purposes of  
14 the record, we do need to have some sense of how imminent, if  
15 you know, John's passing might be.

16 A. I would say days, maybe weeks if we're lucky. Last week  
17 the R.N. with our hospice service pulled me aside after their  
18 visit with John to tell me I should start preparing because she  
19 believes the end is close.

20 Q. Have you seen the form that's used for a Certificate of  
21 Death in Ohio?

22 A. I have.

23 Q. And is a copy of that form present in front of you as  
24 Plaintiffs' Exhibit 3?

25 A. It is.

1 Q. Now there's a box Number 10 where it says Marital Status at  
2 Time of Death.

3 Did I read that correctly?

4 A. Yes, you did.

5 Q. And if this court does not act, how will that box be filled  
6 in?

7 A. Unmarried.

8 Q. And the next box -- and just to finish that thought, how  
9 should it be filled in?

10 A. Married.

11 Q. And the next box says, Surviving Spouse's Name. If this  
12 court doesn't act, how will that box be filled in?

13 A. It will remain blank.

14 Q. How should it be filled in?

15 A. James Obergefell. My name should be there.

16 Q. So if you would, just tell the Court how the problem with  
17 the death certificate and recognition of your marriage by the  
18 state of Ohio harms you and John.

19 A. And I have to read this; otherwise, I will probably not get  
20 through it.

21 Q. That's okay. Go ahead.

22 A. Your Honor, during our 20 years together, John and I have  
23 taken care of each other during good times and bad, for richer  
24 and in poorer, and in sickness and in health.

25 For the past two years, I've had the honor of caring for

1 him as ALS has stolen every ability from him. Rarely a day  
2 goes by that he doesn't apologize for what he feels he's done  
3 to me by getting sick. He is physically incapable of doing  
4 anything to thank me or assuage his feelings of guilt, and we  
5 all know that there are times when words aren't enough. We  
6 need to do something.

7 What he wants is to die knowing that I will be legally  
8 cared for and recognized as his spouse after he is gone. That  
9 would give him peace, knowing he was able to care for me as his  
10 last thank you.

11 When I learned that John would forever be listed as  
12 unmarried on his death certificate nor would my name be listed  
13 as his spouse, my heart broke. John's final record as a person  
14 and as a citizen of Ohio should reflect and respect our 20-year  
15 relationship and legal marriage. Not to do so is hurtful, and  
16 it is hurtful for the rest of time.

17 I would like you to look at this picture. It's a  
18 photograph of our portrait we had painted about five years into  
19 our relationship. It's painted from photographs the artist  
20 took in Spring Grove Cemetery. Why Spring Grove? A couple of  
21 reasons. It's a beautiful, peaceful place that we both love.  
22 But it is also where John's mother's family plot is located.  
23 John has always planned to be memorialized on that family plot,  
24 and his plan changed to include me. However, we later learned  
25 that interment rules put in place by his grandfather and his

1 grandfather's siblings at the time the property was purchased  
2 limited burials and memorials to descendants and married  
3 spouses only. John can be memorialized on the family plot, but  
4 Spring Grove interprets the interment rules and there is no  
5 guarantee that they will recognize our marriage and allow me to  
6 be there as well if Ohio does not.

7 We've been beside each other for more than 20 years, and we  
8 deserve to be beside each other in perpetuity. We want the  
9 option to do that in the family plot in Spring Grove, but that  
10 should not require keeping John's remains in limbo or having  
11 his life go unmarked for an indefinite period of time.

12 It is impossible for me to explain how or describe why, but  
13 getting married changed everything. We feel different. Life  
14 feels different. We feel better. We feel more connected and  
15 more valued.

16 John's life will end soon. I know that, and he knows that.  
17 What a horrible thing to look at your spouse at the end of your  
18 life and have your last thoughts be, I love you, Jim, but I  
19 still can't legally call you husband in a state where we built  
20 our life together, paid taxes, and were productive members of  
21 society. I'm sorry I couldn't take care of you as a thank you  
22 for the way that you took care of me.

23 I will have to live with that the rest of my life, knowing  
24 that those were his last thoughts and not, I love you, Jim, my  
25 husband.

1       We very much want a ruling that gets clear direction on the  
2 death certificate. That ruling will not just be an order about  
3 the details of death, it will be much more because, Judge, it  
4 will state the reasons for your order, and that is even more  
5 important.

6       Every day John and I live without equal protection. Every  
7 day we are treated differently than opposite sex couples who go  
8 to other states and are married, and that denies us both  
9 dignity and justice. To hear a federal judge in Ohio say to me  
10 and say to John before he dies that our marriage is equal and  
11 that it will be recognized would mean that we can stop living  
12 in uncertainty and inequality, allow us to focus solely on  
13 John's quality of life and permit us to fully and truly end  
14 John's life together as a married couple.

15       Each day without that right is a day too long. Everyone  
16 deserves to die with dignity. To allow our marriage to remain  
17 unrecognized by our home state and to allow me, his spouse, to  
18 remain in legal limbo is to cause John to die without dignity.  
19 There is no reparation for the harm that causes us.

20       Thank you.

21             MR. GERHARDSTEIN: Thank you, Judge. If you have no  
22 further questions, I'll reserve further argument until after we  
23 hear from defense.

24             THE COURT: Adverse parties wish to inquire?

25             MS. COONTZ: No, Your Honor.



1 MR. HERZIG: No, Your Honor.

2 THE COURT: You can step down sir.

3 THE WITNESS: Thank you.

4 (Mr. Obergefell resumed his seat at counsel table.)

5 MR. GERHARDSTEIN: Judge, for the record, the picture  
6 he showed you was Exhibit 4, and I'll move the admission of  
7 Exhibits 1 through 4.

8 THE COURT: Any objection to the admission of  
9 exhibits?

10 MS. COONTZ: No, Your Honor.

11 MR. HERZIG: Not for purposes of today, Your Honor.

12 THE COURT: Those exhibits are admitted into evidence.  
13 (Plaintiffs' Exhibit Numbers 1 through 4 were admitted into  
14 evidence.)

15 THE COURT: As I understand it, the plaintiff had made  
16 its opening portion of argument and has presented testimony and  
17 is now prepared to pause and permit the respondents to respond;  
18 is that right? Is that where we are, the plaintiff is now  
19 pausing?

20 MR. GERHARDSTEIN: Yes, Your Honor.

21 THE COURT: Very well. On behalf of the State  
22 defendant.

23 MS. COONTZ: Thank you, Your Honor.

24 May it please the Court, counselors, Mr. Obergefell,  
25 I'm here today on behalf of the Ohio Attorney General Mike

1 DeWine and Governor John Kasich. This is a sympathetic case  
2 and it's a hard one, but we have to keep in mind why we're here  
3 today -- as plaintiffs' motion for a temporary restraining  
4 order only.

5 Plaintiffs challenge is an applied one; that is, that  
6 Article 15, Section 11 of the Ohio Constitution and Ohio  
7 Revised Code 3101(C) as applied to them through a death  
8 certificate is unconstitutional because they were married in  
9 Maryland and a perspective death certificate will not reflect  
10 that marriage.

11 This court can only consider a temporary restraining  
12 order that will prevent the specific irreparable harm that  
13 plaintiffs allege. That's it.

14 Now plaintiffs are before this court asking it to  
15 effectively, but only temporarily, do something that no other  
16 federal court has done in an overnight temporary restraining  
17 order, and that is strike down a state statute and  
18 constitutional provision which defines marriage as a union  
19 between a man and a woman.

20 This court cannot go out on a legal limb, and it  
21 doesn't need to because, as the Court well knows, there are  
22 four factors that the plaintiffs are required to establish for  
23 the issuance of a temporary restraining order, and perhaps the  
24 most important factor in this case is the lack of irreparable  
25 harm. In fact, it is dispositive to plaintiffs' motion.

1           By statute, a death certificate can be changed;  
2           therefore, the harm that plaintiffs allege, an omission on the  
3           death certificate, an omission related to marital information  
4           is, by statute, reparable. 3705.22 specifically provides that  
5           an error or an omission on a death certificate can be  
6           corrected. The plaintiffs cannot prove irreparable harm when  
7           the law allows this change.

8           THE COURT: What if the plaintiff dies in the  
9           meantime?

10          MS. COONTZ: I'm sorry?

11          THE COURT: What if the plaintiff dies in the meantime  
12          and then we go back and fix the death certificate, if that's  
13          what the law requires? Has not that dead plaintiff suffered  
14          irreparable harm?

15          MS. COONTZ: The harm being that the plaintiff died  
16          with the death certificate that did not reflect their marriage?

17          THE COURT: Correct.

18          MS. COONTZ: Your Honor, in that situation it's the  
19          knowledge that we're talking about. The plaintiff is going  
20          to -- if he passes away --

21          THE COURT: He's going to pass away.

22          MS. COONTZ: When he passes away, he's not going to  
23          know what his death certificate says. Unfortunately, nobody  
24          does. Nobody dies with the knowledge of what their death  
25          certificate says. And if, ultimately, a death certificate is

1 incorrect, Ohio law carves out a way to fix it, and that law is  
2 being applied equally, as it would be applied to any other  
3 decedent in the state of Ohio.

4 Further, the relief sought will not repair or prevent  
5 that harm. The remedy that plaintiffs seek is a temporary  
6 restraining order which, by its very nature, is temporary. It  
7 could dissolve. It could be changed at a preliminary  
8 injunction. It could be appealed. It could change at a  
9 permanent injunction stage. It will be years before this issue  
10 reaches finality.

11 THE COURT: I didn't think a TRO was a final  
12 appealable order.

13 MS. COONTZ: If the TRO would go to a preliminary  
14 injunction stage, then that preliminary injunction would be  
15 appealable, Your Honor, is what I'm referring to.

16 So essentially, understandably, plaintiffs want this  
17 finality, but this order is not going to give it to them.

18 We need to put the brakes on. We need a thorough,  
19 deliberate briefing and evidentiary schedule for this matter.  
20 And an overnight temporary restraining order when there is no  
21 evidence of irreparable harm is not appropriate in this  
22 circumstance.

23 THE COURT: And just to divert you, what sort of path  
24 forward do you see on getting to a preliminary injunction  
25 hearing such that a final order, appealable order, could be

1 reached?

2 MS. COONTZ: Well, Your Honor, the Court -- in  
3 answering that question, the Court raised a good question with  
4 respect to the injunctive relief that can be ordered in this  
5 situation with respect to the State defendant, with respect to  
6 the governor and the Ohio Attorney General's Office.

7 Mr. Gerhardstein correctly stated that it is the duty  
8 of the Attorney General to defend statutes, to defend  
9 constitutional amendments. An injunction against the governor  
10 and the Attorney General's Office won't give the plaintiffs the  
11 relief that they seek. A declaratory judgment action, fully  
12 briefed, with evidence on the record, with the statute and the  
13 constitutional amendment -- or defendant is the way to handle  
14 this particular situation.

15 So as far as preliminary injunctive relief, it is  
16 questionable whether this court could order any injunctive  
17 relief as against the governor and the Attorney General that  
18 would prevent the irreparable harm that the plaintiffs allege  
19 absent the injunction.

20 Further, the balance of harm in this situation weighs  
21 in favor of, once again, slowing down this case. While we  
22 understand that there's the possibility that the plaintiff  
23 could die in the meantime, what we're talking about is the  
24 recognition of one marriage, because this isn't a class  
25 challenge, versus a constitutional amendment that was passed by

1 the Ohio voters. A careful and deliberate briefing process to  
2 litigate the validity of that particular constitutional  
3 amendment is what is appropriate in this case.

4 THE COURT: So you're talking about two months of  
5 testimony as to whether there's a legitimate State purpose to  
6 discriminate against same sex marriages?

7 MS. COONTZ: Your Honor, no, I'm not suggesting that  
8 this is something that has to be protracted, but the Court  
9 raises a good point, as well as the cases cited in  
10 Mr. Gerhardstein's brief, that all of the cases cited were not  
11 the result of a temporary restraining order. They were,  
12 rather, protracted litigation. I am not, you know, the State's  
13 position is not that this has to be protracted litigation, but  
14 it is certainly not something that can be decided overnight.  
15 Once again, the irreparable harm -- there's no evidence of  
16 irreparable harm that would justify the granting of a temporary  
17 restraining order, especially for temporary relief. That is  
18 what is here before the Court today.

19 We understand that the plaintiffs want a ruling. They  
20 want a ruling so that they can remove this legal limbo that  
21 Mr. Obergefell referred to. The Court's ruling today is not  
22 going to end that legal limbo.

23 So because the plaintiffs have not established that  
24 they will suffer irreparable harm absent this temporary  
25 restraining order, which again is the only issue that's before

1 the Court today, temporary injunctive relief is not appropriate  
2 in this particular situation.

3 Thank you.

4 Does the Court -- I'm sorry. Does the Court have any  
5 further questions?

6 THE COURT: Not at this time. Thank you.

7 MS. COONTZ: Thank you.

8 THE COURT: Mr. Herzig?

9 MR. HERZIG: May it please the Court, counsel, Aaron  
10 Herzig for Doctor Camille Jones in her official capacity with  
11 the City of Cincinnati. Your Honor, I'll be brief.

12 We are in this case, essentially an instrumentality of  
13 a state scheme for vital statistics recording and reporting.  
14 Doctor Jones is the local representative of the state registrar  
15 who ultimately keeps and holds these records. It puts us in  
16 the middle. If there were three tables, I would be the one  
17 sitting in the middle of this dispute and it does leave us  
18 asking for guidance as to whether she has to comply with  
19 current Ohio law or, if that law is unconstitutional, whether  
20 she can comply with plaintiffs request to be listed as married  
21 on the death certificate.

22 But we don't particularly have a dog in the fight with  
23 regard to the substantive issue of the constitutional amendment  
24 and the statute itself. I think the actions of the City of  
25 Cincinnati, over the last decade or so, indicate that the City

1 is very sympathetic to the idea that Ohio should be a place  
2 where same sex marriage is permitted. As plaintiffs adduced in  
3 testimony, there was a proclamation given specific to this  
4 marriage declaring it their day in the City of Cincinnati on  
5 July 11th, specifically referring to the fact that the same sex  
6 and other lesbian, gay, bisexual couples should have the same  
7 rights in every state as they do in the states where they're  
8 allowed to marry.

9 But as it stands right now, Doctor Jones is compelled  
10 to comply with Ohio law and risks either being in violation of  
11 her duties or potentially criminal sanctions, which we talked  
12 about in our brief, if she doesn't comply. And so we do look  
13 to this Court for guidance on those issues.

14 THE COURT: Why can't you ensure that the death  
15 certificate says, under Status, Married according to Maryland  
16 law?

17 MR. HERZIG: Your Honor hits on an interesting  
18 solution and one that would, in fact, be accurate and I think  
19 keep Doctor Jones out of some of the issues that we talked  
20 about. I don't know how the state registrar's system would  
21 treat that when it arrives with them. The state registrar is  
22 ultimately the individual under the director of health who has  
23 responsibility for the vital records system. But certainly,  
24 that's an order that our client would comply with.

25 THE COURT: So what is the process by which a death



1 certificate will be prepared for Mr. Arthur?

2 MR. HERZIG: My understanding, based on the Ohio  
3 Revised Code and the Ohio Administrative Code, is a preliminary  
4 death certificate is created usually by a funeral director or a  
5 physician. If the funeral director doesn't do it, they have 48  
6 hours to have a physician determine the cause of death and put  
7 that medical information on there. They then are supposed to,  
8 within five days, file that preliminary death certificate with  
9 the medical information with the vital statistics registrar  
10 here in Cincinnati.

11 If they don't -- if they don't receive a death  
12 certificate within five working days of the death, the  
13 registrar, under the Administrative Code, is supposed to go out  
14 and investigate that and essentially make the filing occur at  
15 that point.

16 There are situations I think where that the time  
17 limits can be extended and there are times when errors can be  
18 corrected, as both parties have explained, but that's the basic  
19 idea.

20 THE COURT: So the funeral director prepares the  
21 preliminary death certificate and fills out the box as to  
22 status and surviving spouse, and that funeral director presents  
23 it to the local registrar and she records it?

24 MR. HERZIG: Yes, Your Honor. My understanding is  
25 there's an electronic system that the funeral director can

1 access and fill that out electronically in the first instance,  
2 although they do bring a paper copy to the vital statistics  
3 registrar with the complete medical information. The  
4 information is based on what they call the informant, the  
5 individual who talked to the funeral director and would explain  
6 the boxes, how the boxes should be filled out.

7 THE COURT: And if a funeral director filled out the  
8 boxes on Mr. Arthur's perspective death certificate Married  
9 Under Maryland Law; Surviving Spouse, Mr. James O, Under  
10 Maryland Law, would she be able to record it?

11 MR. HERZIG: I think under the Ohio Constitution and  
12 the 3101.01, if she knew that that was being presented to her  
13 as trying to give affects to a marriage outside of Ohio that is  
14 not legal in Ohio, that is not recognized by Ohio, I'm not sure  
15 that she could do that.

16 I will say that my understanding is, of the typical  
17 situation, this information isn't checked. If someone has a  
18 name that is not -- where it is not easy to tell if it is a man  
19 or a woman -- I'm Aaron and I've spent half of my life telling  
20 people at StarBucks that it is two A's, not E-R-I-N. So I  
21 understand the issue.

22 Typically, our registrars don't even look. They're  
23 looking to make sure that the medical information is correct  
24 and if it needs to be referred to the coroner for further  
25 investigation; otherwise, they send it up to the State and I

1 don't think the State gives any particular directive about  
2 ensuring the accuracy of that other information.

3 So were it not for the fact that we were being  
4 presented with someone saying absolutely, recognize a same sex  
5 marriage, we might not know that we had recognized one.

6 THE COURT: And do you think putting on the death  
7 certificate Married Under Maryland Law is an Ohio recognition  
8 of same sex marriage?

9 MR. HERZIG: No, Your Honor, I don't think I said that  
10 or certainly didn't intend to. I think that would be a  
11 statement, an accurate statement, that this marriage was under  
12 Maryland law. The concern would be how the next person might  
13 interpret that document or misunderstand it but, no, I don't  
14 think that in itself would be a recognition.

15 THE COURT: And what is the timing that compels your  
16 client, plaintiff may have referred to, in order to take your  
17 time pressure off on recording the death certificate so that  
18 there's enough time to make sure that it is correct?

19 MR. HERZIG: Your Honor, the Administrative Code talks  
20 about there being five working days to file the death  
21 certificate before the vital records registrar would go out and  
22 investigate why it hasn't been filed. So I don't know exactly  
23 how long that process takes thereafter, but the Administrative  
24 Code calls for five working days from death to filing.

25 THE COURT: So a funeral director fills out a death

1 certificate, files it with vital statistics within five days.

2 What does the registrar do? Is there any affirmative act?

3 MR. HERZIG: My understanding, Your Honor, is the  
4 registrar would then check to make sure that the basic  
5 information is there and then send -- I believe the original  
6 goes to the State and a copy stays here. They also enter  
7 information into the same electronic database, but paper and  
8 electronic go hand in hand.

9 THE COURT: And the City, the City of Cincinnati takes  
10 the position in this litigation that it will not defend the  
11 propriety of the same sex marriage ban in Ohio?

12 MR. HERZIG: That's correct, Your Honor. Not  
13 dissimilar from the Obama administration's position with the  
14 federal DOMA. They continue to enforce it, but they do not  
15 defend it.

16 THE COURT: Very well. Have you had a chance to  
17 present your position?

18 MR. HERZIG: I have. Thank you, Your Honor.

19 THE COURT: Thank you.

20 Typically we would now put it back for a reply, if  
21 any. Typically, when I ask lawyers, Do you want an opportunity  
22 to reply, they say yes.

23 MR. GERHARDSTEIN: Yes, Your Honor.

24 THE COURT: Very well.

25 MR. GERHARDSTEIN: Thank you for your thoughtful

1 questions, Judge, and thanks for making this time available  
2 today.

3           There is no way, with all due respect, that Married  
4 Under Maryland Law satisfies the plaintiffs in this case,  
5 legally or emotionally and in terms of repairing the harm.  
6 That is simply a reflection of what truly does exist -- they  
7 are married under Maryland law. But they're here because they  
8 should be married under Ohio law, given the equal protection  
9 violation, and to simply --

10           THE COURT: So you're looking to this court to strike  
11 down the amendment to the Ohio Constitution which resulted from  
12 a statewide vote saying that, in Ohio, we're not going to  
13 recognize or celebrate same sex marriages?

14           MR. GERHARDSTEIN: I am looking to this court to  
15 enjoin, as applied to these two, and then to fully explore it  
16 so that this isn't done on a wrong basis, the disparate  
17 treatment of opposite sex couples married in other states and  
18 same sex couples married in other states where those marriages  
19 are both legal in those states but not legal in Ohio.

20           Ohio says, I am going to take all of the opposite sex  
21 couples and recognize them as valid; I'm not going to do that  
22 for same sex couples. That deserves a merits ruling.

23           Now, I'm all about trying to make sure that the record  
24 is complete enough so that it matches the seriousness of what  
25 we're talking about. It's unfortunate, very unfortunate, that

1 one of the plaintiffs is near death. And we have just heard  
2 enough of a difference of opinion between the two defendants  
3 about what happens with respect to the death certificate that  
4 that in itself suggests that the Court has to act to put it all  
5 on hold. And that comes in the form of a temporary restraining  
6 order, and that can only come with some sort of acknowledgment  
7 that there's a likelihood of success on the merits.

8           So we are looking to take baby steps. We do want a  
9 temporary restraining order to put this situation into  
10 perspective. That order will, in and of itself, begin to  
11 address the harm that these two men have suffered.

12           And I heard the State argue very passionately that  
13 there's no harm here. But there are many, many cases that  
14 we've cited that indicate that a day that you live with a  
15 constitutional violation is irreparable. You can't have that  
16 day back. They can't have their recognition of marriage,  
17 however it comes back, even if it is just saying I think your  
18 marriage will be recognized because you've established that  
19 there's a likelihood of success.

20           That's as much as we can do for the Court right now  
21 for these gentlemen. And that would be very helpful, and it  
22 would begin to remediate this harm that they're suffering. It  
23 is both. It is the technical problems of the death  
24 certificate, which don't seem to be able to be solved without  
25 some action, and it's the daily action of their lives knowing

1 that they can't expect that this will change. And, indeed, I  
2 think given the protection violation, they should have the hope  
3 of knowing that this can change.

4 And if you look at some of the other cases, there was  
5 a representation made that these big constitutional issues  
6 don't start with temporary restraining orders. We do that all  
7 the time, Judge. I mean, especially in reproductive health,  
8 there's a lot of statutes that get enjoined. *Equality*  
9 *Foundation* itself started with a preliminary injunction, and  
10 that was only because we had enough time before the effective  
11 daylight of Article 12 to do it. But it was still temporary  
12 relief to put everything on hold while we explored it  
13 thoroughly.

14 And I think this is a simple enough issue that when  
15 you look at the likelihood of success on the merits, the severe  
16 harm that the plaintiffs really are suffering, and then you  
17 also look at the other factors. When you look at the balance  
18 of harms, there's not much that the State is going to be harmed  
19 by here. This is simply the thorough explanation of a problem  
20 that the State created by recognizing opposite sex couples who  
21 are married in other states.

22 And the public interest is always served by following  
23 the constitution. I mean, we shouldn't let a day go by where  
24 we think there is a serious constitutional violation governing  
25 our civil life and we say, well, let's deal with it tomorrow.

1 I mean, let's not. Let's try to address these in a responsible  
2 way, which is what we propose today.

3 THE COURT: In terms of balancing the potential harm  
4 to each, your argument is that the State won't be harmed  
5 because this is just a baby step and it only applies to these  
6 two plaintiffs and it's not going to apply across the board  
7 until or unless there's full blown proof that there's no  
8 legitimate State reason to ban same sex marriages?

9 MR. GERHARDSTEIN: That's part of it. And the rest of  
10 it is that it really does violate the Constitution, so the  
11 State isn't harmed if you're righting a wrong.

12 THE COURT: But a temporary restraining order  
13 typically is designed to protect the status quo.

14 MR. GERHARDSTEIN: And that's a good point, but that  
15 doesn't trump everything else. And you might say that the  
16 status quo is that the State recognizes out-of-state marriages.  
17 And now we've identified an out-of-state marriage that it  
18 doesn't recognize.

19 I think that originally there wasn't a lot of thought  
20 put into whether there's going to be now 13 places you can go  
21 within the continental United States to get married as a same  
22 sex couple, and I think facts have superseded where the State  
23 was at. And the status quo here is that the State does  
24 recognize out-of-state marriages, and we're just trying to  
25 include an out-of-state marriage that's out of step with -- the



1 State's response to it is out of step.

2 THE COURT: The status quo is the law in this state,  
3 as written by this state's legislatures over the last 100 or  
4 more years, has been that the validity of a marriage is  
5 determined by its compliance with the laws of the jurisdiction  
6 in which it was solemnized or celebrated.

7 MR. GERHARDSTEIN: That's correct. That's the  
8 overriding legal principle that has guided the recognition of  
9 out-of-state marriages.

10 THE COURT: And Ohio's effort in 1994 to single out  
11 same sex couples as not being worthy of recognition of marriage  
12 in this state is unlawful because it denies equal protection of  
13 laws to our citizens?

14 MR. GERHARDSTEIN: Correct. And I think it was 2004  
15 that they passed that. And it is unlawful because it denies  
16 equal protection and imposes on a growing number of Ohio  
17 citizens on a daily basis their right to equal justice.

18 THE COURT: And as the Court is balancing the  
19 respective harms to each side, if the Court were to put on a  
20 temporary order, is not the State harmed when a single federal  
21 judge with the stroke of a pen puts on hold a democratically  
22 elected amendment to the Constitution?

23 MR. GERHARDSTEIN: Judge, this is how our system  
24 works. And the worst way to protect minority rights is to put  
25 them up for a vote. So, in fact, initiatives that have civil

1 rights implications that are passed by an initiative as opposed  
2 to deliberative bodies often are more suspect because it is the  
3 passion of the campaign.

4 And, in fact, if you look at -- and this gets ahead of  
5 where we are in the record. But if you look at the trial brief  
6 we filed this morning, we cite to a Law Review article that  
7 reviewed the campaign that led to the passage of this. And  
8 just as in Prop 8, there were lots of misstatements and lots of  
9 attempts to appeal to the passion of the majority who were  
10 fearful of gay people.

11 And that's what happens sometimes when you put civil  
12 rights issues up for vote, and it shouldn't be a surprise that  
13 we have an insular minority who are basically targeted because  
14 of their status and suddenly their rights are defined by a  
15 majority that doesn't understand them, isn't open to them, and  
16 doesn't think about the Equal Protection Clause as much as we  
17 do in a courtroom.

18 THE COURT: The mere fact that voters establish law  
19 doesn't make the law lawful?

20 MR. GERHARDSTEIN: No. In fact, you look at Romer. I  
21 mean, Romer is Colorado Amendment 2. The whole state  
22 constitution was amended to target gays and say that they  
23 couldn't get the protection of civil rights laws. And the  
24 United States Supreme Court, in a brief and very focused  
25 decision, said that's an illegitimate purpose. And the fact

1 the majority of the people of Colorado passed it may have  
2 explained how it happened, because they didn't have a  
3 legislative service commission with a bunch of lawyers saying,  
4 by the way, you're not allowed to do this. They just voted.  
5 And that happens when you put minority rights up for a majority  
6 vote.

7 Judge, we do believe that, in light of the evidence  
8 that we've been able to present and the legal arguments so far,  
9 and if you look at the revised proposed temporary restraining  
10 order, that there is enough present in terms of likelihood of  
11 success on the merits, irreparable harm, balance of hardships  
12 and public interest, that this Court should enjoin the  
13 defendants from enforcing the subject Ohio laws so that these  
14 two men can be free of the application of those laws as it  
15 applies to their marriage; and particularly, that this Court  
16 can restrain anybody who is about to fill out a death  
17 certificate from filling it out in such a way that their  
18 marriage in Maryland would not be recognized, until you've been  
19 able to hear the case on the merits.

20 THE COURT: Very well.

21 MR. GERHARDSTEIN: Thank you.

22 THE COURT: Thank you.

23 The Court's going to take the matter under  
24 consideration. I understand the timing and urgency of this.  
25 The Court has spent considerable time reviewing the parties'

1 pleadings and briefs to date. I need a little more time. I'll  
2 act expeditiously.

3 I will act today. And no matter what, it's absolutely  
4 clear in the law that it is constitutionally prohibited to  
5 single out and disadvantage a group of people simply because  
6 their beliefs don't coincide with the popular majority view.

7 The Court expresses its appreciation to counsel for  
8 their hard work today. The Court expresses its appreciation to  
9 the attorneys and the plaintiffs, and the defendants, and the  
10 citizens in being patient. Give me the time to do what the  
11 evidence and the law requires. And I intend to make an initial  
12 ruling today.

13 Having said all of that, unless there's something  
14 further, the Court is prepared to recess. Is there more today,  
15 from the plaintiffs?

16 MR. GERHARDSTEIN: No, Your Honor.

17 THE COURT: From the State defendants?

18 MS. COONTZ: Nothing further, Your Honor. Thank you.

19 THE COURT: From the City of Cincinnati?

20 MR. HERZIG: No, Your Honor.

21 THE COURT: Very well. The Court prepares to adjourn.

22 THE COURTROOM DEPUTY: All rise. This court is now  
23 adjourned.

24 (The proceedings concluded at 2:38 p.m.)  
25

I N D E X

PLAINTIFFS' WITNESS:	DIRECT	CROSS
JAMES OBERGEFELL	16	--

E X H I B I T S

PLAINTIFFS' EXHIBITS:	ADMITTED:
Numbers 1, 2, 3 and 4:	25

- - -

C E R T I F I C A T E

I, Jodie D. Perkins, RMR, CRR, the undersigned,  
certify that the foregoing is a correct transcript from the  
record of proceedings in the above-entitled matter.

s/Jodie D. Perkins  
Jodie D. Perkins, RMR, CRR  
Official Court Reporter